

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
HITLER CALLE, :
:
Plaintiff, : 20-CV-4178 (LDH) (LB)
:
: December 20, 2023
:
V. : Brooklyn, New York
:
PIZZA PALACE CAFÉ LLC, :
et al., :
Defendant. :
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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE LOIS BLOOM
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: MARY BIANCO, ESQ.
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For the Defendant: EMANUEL KATAEV, ESQ.
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1 THE CLERK: Civil cause for status
2 conference, docket number 20-CV-4178, Calle v. Pizza
3 Palace Café, LLC, et al.

4 Will the parties please state your names for
5 the record.

6 MS. BIANCO: Mary Bianco, CSM Legal, for the
7 plaintiff.

8 MR. KATAEV: Good morning. Emanuel Kataev
9 of Milman Labuda Law Group PLLC for the individual
10 defendants in this case.

11 MR. AMINOV: David Aminov of Milman Labuda
12 Law Group PLLC for the individual defendants in this
13 case.

14 THE CLERK: The Honorable Lois Bloom
15 presiding.

16 THE COURT: Good morning, Ms. Bianco and Mr.
17 Kataev and Mr. Aminov. This is a conference in
18 plaintiff's closed Fair Labor Standards Act case, which
19 had been filed back in September of 2020. Plaintiff
20 worked as a pizza maker at Pizza Palace and alleges
21 that the defendants, individually named Sasha Ishaqov,
22 Yuri Ishaqov, and Vlady Djouraev, were all joint
23 employers who operated the defendant corporation Pizza
24 Palace LLC as an alter-ego.

25 When defendants failed to respond to

1 plaintiff's amended complaint, plaintiffs moved for a
2 default judgment. I issued a report and recommendation
3 in January of 2022 recommending that plaintiff be
4 awarded \$249,731.08 in damages. My report was adopted
5 by the Honorable LaShann DeArcy Hall and the clerk
6 entered judgment against the defendants on January 31st,
7 2022.

8 Now, almost two years later, plaintiffs and
9 defendants and Sasha Ishaqov, Yuri Ishaqov, and Vlady
10 Djouraeve file what they think is a consent motion.
11 It's labeled as a Federal Rule of Civil Procedure
12 60(b)(1) motion. It's a letter motion asking the Court
13 to set aside the judgment and to send them to
14 mediation. And according to the motion, the individual
15 defendants assert that they were not properly served,
16 which plaintiff's counsel rejects, although to avoid
17 motion practice, they say they consented to set aside
18 the judgment. I then scheduled today's conference.

19 So how does this come to happen?

20 MR. KATAEV: Would the Court like to hear
21 from the defendants?

22 THE COURT: I'm asking, how does this come
23 to happen, and stand when you address the Court.

24 MR. KATAEV: I believe the answer is that
25 the answer is that the defendants were never properly

1 served.

2 THE COURT: And every time that a report and
3 recommendation is entered by the Court, it marks that
4 the plaintiff shall serve it on the defendants. I
5 understand that there was a business that was served as
6 well as the individual defendants. Again, two years
7 later, you're coming to the Court. I have a different
8 idea of how this might have happened. You can tell me
9 if this is anywhere close to --

10 So the business may have gone out of
11 business because it's Pizza Palace LLC. God only knows
12 who is Pizza Palace LLC. But now, when these three
13 people are trying to start something else up and this
14 judgment is going to ruin their credit, now they
15 suddenly want to put their hand up and come back in, in
16 a case that's been closed for almost two years.

17 MR. KATAEV: That's entirely speculative,
18 your Honor.

19 THE COURT: It is.

20 MR. KATAEV: And that is not what happened.

21 THE COURT: Okay. Well, Mr. Kataev, I will
22 tell you this: Under Rule 55(c), the Court may set
23 aside a final judgment under Rule 60(b), and Federal
24 Rule 60(b) permits a party to seek relief from a final
25 judgment and request reopening of the case under a

1 limited set of circumstances. Here, the parties move
2 under Rule 60(b)(1), which allows for a default
3 judgment to be set aside for mistake, inadvertent
4 surprise, or excusable neglect. However, it must be
5 made no more than a year after the entry of the
6 judgment. We are way past a year.

7 MR. KATAEV: That may be the case, your
8 Honor, but under 60(b)(4), which is not subject to the
9 one-year requirement --

10 THE COURT: Guess what?

11 MR. KATAEV: -- they were never served.

12 THE COURT: I have a motion. I rule on the
13 motion I've been given. I do not liberally construe
14 lawyers' pleadings. You cannot stipulate to get rid of
15 a judgment of the Court. You did not do anything
16 properly. You gave no support to the Court for any
17 basis to do what you're asking it to do. So I am
18 recommending to Judge DeArcy Hall, and I can cite the
19 cases, that under 60(b)(1), it must be within a
20 reasonable time, no more than a year after the entry of
21 the judgment.

22 There's a case from the Second Circuit
23 that's fairly recent, Mandala v. NTT Data (ph). It's
24 at 2023 W.L. 8499054 (Second Circuit December 8th,
25 2023). It states Rule 60(b)(1) has a one-year window

1 that runs from the entry of the judgment.

2 This one-year limitation period is absolute.
3 That's Warren v. Garvin (ph), 219 F.3d 111 at page 114
4 (Second Circuit 2000).

5 Such finality "fulfills the purpose for which
6 civil courts have been established, the conclusive
7 resolution of disputes within their jurisdiction." And
8 that's Kremer v. Kem Construction Corporation (ph), 456
9 U.S. 461 at page 467, note 6 (Supreme Court 1982).

10 So, again, here the judgment was entered on
11 January 31st, 2022. That's ECF number 39. And the
12 motion here was filed on November 21st, 2023. That's
13 ECF number 41, one year, nine months and 21 days later.
14 Accordingly, I respectfully recommend that the parties'
15 motion at ECF 41 should be denied pursuant to 28 USC
16 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
17 Procedure.

18 The parties shall have 14 days from today,
19 because I'm giving you this report on the record, to
20 file written objections. That's under Federal Rule of
21 Civil Procedure 6. Such objections shall be filed with
22 the clerk of the Court and any request for an extension
23 of time to file objections must be made within the 14-
24 day period. If you fail to file a timely objection to
25 the report, that general waives any further judicial

1 review. Marcella v. Capital District Physicians Health
2 Plan, 293 F.3d 42 (Second Circuit 2002). Small v.
3 Secretary of Health and Human Services, 892 F.2d 15
4 (Second Circuit 1989). And see Thomas v. Oren (ph),
5 474 U.S. 140 (1985).

6 Anything else?

7 MR. KATAEV: No. We'll be making the
8 appropriate motion. Thank you, your Honor.

9 THE COURT: Again, I want you to think this
10 one through because whether or not your clients believe
11 that they were properly served, you gave the Court
12 nothing, no support. You gave a stipulation under a
13 different basis than what the letter motion was, big
14 waste of the Court's resources.

15 MR. KATAEV: I understand what the Court is
16 saying and we will be guided by that. But the purpose
17 of what we did, your Honor, was to avoid the costly
18 practice of making a motion. That's why we stipulated.

19 THE COURT: There's a judgment of a federal
20 court, Mr. Katanev (sic).

21 MR. KATAEV: It's Mr. Kataev, your Honor.

22 THE COURT: Your client is paying you to do
23 the work correctly. You can't shortcut by telling the
24 Court something that you've agreed upon where there's
25 no basis in law or in fact.

1 MR. KATAEV: I understand about the
2 60(b)(1). The correct --

3 THE COURT: Well, I will also tell you, you
4 filed a stipulation. That doesn't to a court judgment.

5 MR. KATAEV: Fine. We will -- we will --

6 THE COURT: There's a judgment. You did
7 nothing to show the Court a route and a basis to get
8 the Court where you want it to go.

9 MR. KATAEV: I understand, your Honor.

10 THE COURT: You just -- and let me just tell
11 you, Ms. Bianco, I'm sort of surprised that Ms. Sojo
12 didn't come herself. This was a Faillace case.

13 MS. BIANCO: Yes.

14 THE COURT: We had so many problems with
15 Faillace. So for her to give me this end run without
16 any legal support -- there's a judgment. It's been
17 entered for almost two years. And by stipulation, we
18 should just say, oh, all that work we did. And why
19 your client would agree to it when they got a judgment
20 for a lot of money from this Court -- so something is
21 not computing here.

22 MR. KATAEV: I understand the Court's
23 position. We will address those concerns.

24 THE COURT: I do not want people being paid
25 under the table to get out of lawful entries of

1 judgments. Do you understand how it seems to me? Your
2 clients are going to collect on \$249,731.08 plus
3 interest accruing from when that was entered, and now
4 you're agreeing that there's going to be a lesser
5 amount collected? Who is getting the kickback here?

6 MR. KATAEV: Your Honor, I respectfully
7 submit that there's a lot of speculation and
8 conjecture.

9 THE COURT: That's true, Mr. Kataev.

10 MR. KATAEV: I would like to --

11 THE COURT: But you understand why I'm
12 angry, don't you?

13 MR. KATAEV: I understand but --

14 THE COURT: Because there was a lot of work
15 that went into this case for you to slapdash a couple
16 of pages together and send it to the Court, and think
17 that the Court should then give you the result that
18 your clients are hoping for.

19 MR. KATAEV: Your Honor, I'm not hoping for
20 anything. I took the path of least resistance. Making
21 a motion is very costly. I represent three individual
22 defendants who are no longer in this business. Here is
23 what happened, to assuage the Court's concerns: First
24 of all, there's been no back-dealing between our firms.
25 Our firms don't get along, for what it's worth.

1 THE COURT: So why would anybody agree to
2 take something different?

3 MR. KATAEV: No one agreed to take anything
4 different. They saw --

5 THE COURT: What was the stipulation?

6 MR. KATAEV: They saw that our motion has
7 merit because the defendants were not properly served.
8 60(b)(4) doesn't have the one-year limit.

9 THE COURT: I would like to see all of your
10 clients come into the courtroom. If there's going to
11 be any sort of application, it has to be well-supported
12 in the law. And then, again, I could never believe
13 there was somebody named Hitler Calle in the first
14 place. But since you're saying that your client's name
15 is Hitler, you can get them in but not on these papers
16 because this is all for naught. And for you to say
17 that you were taking the path of least resistance -- do
18 not expect a federal court to follow you down that
19 path.

20 MR. KATAEV: Understood, your Honor.

21 THE COURT: That's lazy and that is not what
22 the Court is about. I already put all the work in.
23 Judge DeArcy Hall already put the work in. There's a
24 judgment. You can't wipe out a judgment by a half-
25 backed idea.

1 MR. KATAEV: Your Honor, again, Rule 1
2 requires the rules to be construed in the path for the
3 speedy, inexpensive, and just determination of --

4 THE COURT: You know, again, Mr. Kataev --

5 MR. KATAEV: Okay. That's all I was trying
6 to do.

7 THE COURT: You should fall on your sword,
8 say you've now learned the lesson again that the easy
9 way is not always going to win the day.

10 MR. KATAEV: Your Honor, I'm not arguing
11 with you that my motion has merit. I understand that
12 the Court made its decision. I accept that decision.
13 I will now follow the rule that the Court wants us to
14 follow to get this done the right way.

15 THE COURT: The Federal Rules.

16 MR. KATAEV: I am just --

17 THE COURT: There are no other rules.

18 MR. KATAEV: I am just explaining why we
19 took the path that we did. It was a cost-saving
20 measure.

21 THE COURT: It wasn't a cost-saving measure.
22 Now you see that it was not a cost-saving measure.

23 MR. KATAEV: That's fine.

24 THE COURT: It didn't save you, it didn't
25 save me, and now Judge DeArcy Hall is going to have to

1 deal with it, too.

2 MR. KATAEV: Understood, your Honor.

3 THE COURT: It didn't save anybody.

4 MR. KATAEV: Okay, I understand. I acted
5 with the right intentions is my point.

6 THE COURT: Again, I would like to hear from
7 the Hitler, Sasha, Yuri, and Vlady person how this is
8 all going to play out because this was a 35-page report
9 and recommendation entered back in January of 2022.
10 The judgment was on January 31st, 2022.

11 I imagine you were trying to collect on
12 behalf of your clients. Is that what happened?

13 MS. BIANCO: Yes, your Honor.

14 MR. KATAEV: I can provide some more detail
15 on that.

16 THE COURT: Go ahead because I'm all ears.

17 MR. KATAEV: Sure. There seems to be a lot
18 of speculation that needs to be cleared up, so here's
19 what happened: We were never served with any of these
20 papers ever. We first learned about this lawsuit in
21 November.

22 THE COURT: As an LLC --

23 MR. KATAEV: I don't represent an LLC.

24 THE COURT: -- they were required to be
25 registered.

1 MR. KATAEV: I don't represent --

2 THE COURT: And they were probably served in
3 accordance with what they were registered with the
4 Secretary of State.

5 MR. KATAEV: I don't represent the LLC, I
6 only represent the individual defendants. I don't care
7 about the LLC.

8 THE COURT: And who was the LLC?

9 MR. KATAEV: I don't know.

10 THE COURT: Oh, so these -- if I was to put
11 these people on the -- on the stand and have them
12 sworn, they would say they have no idea who the LLC
13 was.

14 MR. KATAEV: As far as I know, the LLC --

15 THE COURT: You probably didn't ask them
16 that, did you?

17 MR. KATAEV: I did ask them that. Your
18 Honor, I would like to be heard without -- without --

19 THE COURT: Mr. Katanev, I have a history
20 with you. I don't like to be interrupted and I don't
21 like for you to present this as if I am doing something
22 untoward by questioning you. You want to tell me your
23 tale, I'll listen to your tale. Go ahead.

24 MR. KATAEV: It's not a tale, your Honor. I
25 respectfully reject that.

1 THE COURT: Okay, go ahead, sir.

2 MR. KATAEV: And whatever happened in a
3 prior case has nothing to do with this case, and I
4 think that this Court is aware of the opposing counsel
5 in that case, and I'll leave it at that, okay? Here is
6 what happened: This LLC that's a defendant in this
7 case is the -- I don't want to say predecessor but it
8 was the prior entity owned by different people. My
9 three clients have no membership interest in this LLC,
10 okay, which is one of the reasons why they were never
11 properly served. That's one.

12 Two, my clients never received notice of
13 this lawsuit. Their names are incorrect. Their last
14 name is not Ishaqov, okay? It's I-s-k-h-a-k-o-v, all
15 right? And what happened here was that judgment
16 enforcement action was taken against the person named
17 Sasha, whose real name is Alexander, by the way, not
18 Sasha. He's not working. His wife works. They live
19 together and their joint bank account was restrained by
20 the judgment enforcement action. This poor woman --

21 THE COURT: And what was their relationship
22 to Pizza Palace?

23 MR. KATAEV: They owned -- the three of them
24 or some of the three of them owned the business after
25 this LLC sold it to them.

1 THE COURT: And when was that?

2 MR. KATAEV: I don't recall the dates but I
3 do have a declaration I prepared in anticipation of
4 motion practice, in which those dates are there, which
5 will be filed with the Court in short order.

6 THE COURT: I'm not going to get to those
7 dates. You don't understand. If you don't get this
8 reopened without just citing a different rule, you're
9 not going to get to those dates.

10 MR. KATAEV: I understand the Court's
11 position.

12 THE COURT: So this was a case that --
13 again, it was Pizza Palace Café doing business as Pizza
14 Palace, and this guy Hitler said that they didn't pay
15 him. And I would imagine, because they're saying that
16 all the defendants were joint employers and that they
17 shared control over the employees of the Pizza Palace,
18 I would imagine -- since this guy is saying he worked
19 from 2017 through 2019 and then again in 2020, I would
20 imagine that there was some overlap between your
21 clients and the people who were the Pizza Palace LLC,
22 no?

23 MR. KATAEV: There may have been but that
24 doesn't change the fact that they were never properly
25 served.

1 THE COURT: So what were the dates that
2 your --

3 MR. KATAEV: There's no affidavit of
4 service.

5 THE COURT: What were the dates that your
6 clients were in this pizza business?

7 MR. KATAEV: I don't know the dates off the
8 top of my head. I have it in a written declaration
9 that I prepared in anticipation of motion practice.

10 THE COURT: So get your written declaration
11 in.

12 MR. KATAEV: That's what I have to do.

13 THE COURT: No, you're saying you don't
14 know. It's got to be something on your email, on your
15 phone, something.

16 MR. KATAEV: I can look.

17 THE COURT: Because, again, if it's the same
18 years, 2017 through 2020 --

19 MR. KATAEV: It's not the full six-year
20 period. It's a smaller portion of it.

21 THE COURT: Do you have anything you want to
22 chime in with here, Ms. Bianco?

23 MS. BIANCO: No. I agree that we'll --
24 we'll submit the proper papers. I was added to this
25 case late as you saw. The only thing I can assert is

1 that that is his real name. We were as surprised as
2 the Court is at the first name but we believe -- we
3 contest proper service.

4 THE COURT: You're talking about plaintiff's
5 real name is Hitler.

6 MS. BIANCO: Yes, your Honor.

7 THE COURT: But as far as Sasha Ishaqov and
8 Yuri Ishaqov and Vlady Djouraev, how did your client
9 come up with those names because now Mr. Katanev is
10 saying that's not anyone's name.

11 MR. KATAEV: My name is Kataev. I don't
12 have an "n" in my name.

13 THE COURT: Kataev, sorry.

14 MS. BIANCO: Sasha can be a nickname for
15 Alexander, so that would clear up the Alexander versus
16 Sasha. We did a search and our client confirmed that
17 these were the names that he used to address his bosses
18 and the owners.

19 THE COURT: And as far as Pizza Palace LLC?

20 MS. BIANCO: To our knowledge, that is the
21 LLC owned by the defendants and that was operating at
22 the time that our client was employed there. That's
23 all.

24 THE COURT: And service you were going to
25 tell me was properly made so --

1 MS. BIANCO: We believe, yes.

2 THE COURT: And when the collection was
3 going through and Mr. Kataev is saying that he first
4 got notice when his wife's bank account was being
5 frozen, was he served at a different address for the
6 collection than he was served for the purposes of the
7 action?

8 MS. BIANCO: That I would have to confirm
9 with --

10 THE COURT: Well, that's something you
11 should look into as well.

12 MS. BIANCO: Of course.

13 MR. KATAEV: He wasn't -- he wasn't served.
14 We got it from the bank. He never received it. All
15 they knew was that their bank accounts were frozen and
16 they had no idea why. And I stepped in to help them
17 and I found out that it's from Chase. We have facts
18 with this case --

19 THE COURT: But that's on the one guy,
20 Sasha. What about the other people?

21 MR. KATAEV: No judgment enforcement action
22 was taken against them as far as I know, and I
23 nonetheless willingly agreed to accept service so that
24 we can move forward and get this case resolved.

25 THE COURT: But I asked you when was it

1 that --

2 MR. KATAEV: I don't have the declaration,
3 your Honor. It's in my office. I could submit it
4 today when I get to my office.

5 THE COURT: I don't want to see piecemeal
6 work. I am so not interested in doing this your way.

7 MR. KATAEV: Okay.

8 THE COURT: There's only one way to do this.
9 It's the Federal Rules of Civil Procedure. You don't
10 give the Court support for it, you're not going to get
11 what you are asking for.

12 MR. KATAEV: And I've already stated I
13 understand that and I'm going to make the appropriate
14 motion.

15 THE COURT: So anything else you wanted to
16 tell me? You said that they didn't know anything about
17 it until they got served through their bank that their
18 bank account was frozen. He's not working, she's
19 working. So what else?

20 MR. KATAEV: They didn't get served, your
21 Honor. The bank accounts were frozen.

22 THE COURT: And what about the other two?

23 MR. KATAEV: What about them? They never
24 received service of it, either. All service was made
25 on the business to a guy named Lewar (ph). We don't

1 know who that is.

2 THE COURT: I have no idea what you're
3 talking about but when the --

4 MR. KATAEV: Affidavits of service filed
5 with the Court show --

6 THE COURT: When the clerk of court enters a
7 default judgment, it's because the proof of service has
8 complied, and it is usually my practice -- it says it
9 was served on Sasha Ishaqov at 63-60 108th Street.

10 MR. KATAEV: Upon?

11 THE COURT: It says --

12 MR. KATAEV: There's not a single affidavit
13 of service that these papers were served upon any of
14 these individuals actually individually. It was served
15 on a place of business, which is not a proper place to
16 serve an individual person. It's not a suitable agent
17 discretion (sic).

18 THE COURT: And they are saying they had
19 closed the business by that time?

20 MR. KATAEV: The business hasn't been
21 closed. My understanding is that it has been sold. So
22 there's a period of time where my clients, some or all
23 of them, owned this business and there's a period of
24 time where they no longer owned it.

25 THE COURT: So these affidavits of service

1 are saying that they went to that place of business and
2 served these, and they give the white male, black hair,
3 35 years old, 180 pounds. And it's a process server,
4 it's not somebody who is a friend of family member of
5 Hitler Café -- Hitler Calle.

6 MR. KATAEV: Your Honor, the affidavits of
7 service are entitled to a presumption of validity but
8 that presumption is rebuttable.

9 THE COURT: Except two years, you're out of
10 the box on that, plus the fact that Pizza Palace Café
11 was served through the Secretary of State.

12 MR. KATAEV: I understand this Court's
13 desire to have finality in this case but 60(b)(4) is
14 not --

15 THE COURT: It's not my desire to have
16 finality, it is final. There's a judgment entered.
17 You're two years after the judgment.

18 MR. KATAEV: 60(b)(4) is not subject to the
19 one-year limit.

20 THE COURT: You'll have to brief it and give
21 me specifics and have attached to it affidavits because
22 I'm not going to do this in your short and easy way.

23 MR. KATAEV: Understood.

24 THE COURT: That is not under the Federal
25 Rules. You're a lawyer, you should know better.

1 MR. KATAEV: Understood, your Honor. I've
2 already said that I'll make the appropriate motion.

3 THE COURT: Okay. Anything else that needs
4 to be addressed on behalf of plaintiff today?

5 MS. BIANCO: That's all for plaintiffs.

6 THE COURT: I still don't understand why
7 plaintiff would give up a judgment for a sum certain.

8 MS. BIANCO: I think the thinking is that
9 it's oftentimes better to mediate than try to collect
10 this large amount because if the clients declare
11 bankruptcy, then our client doesn't get anything.

12 THE COURT: But you already have one bank
13 account. Have you tried to attach the other two
14 people's bank accounts?

15 MS. BIANCO: I'm sure that they have but to
16 no --

17 THE COURT: Well, this is something that
18 somebody from your office should be prepared to tell
19 the Court.

20 MS. BIANCO: Of course.

21 THE COURT: I am not against doing something
22 that will give finality in a just way. I am against
23 reopening a judgment after two years on flimsy and no
24 legal basis. Again, just saying we didn't get served,
25 we didn't get served, we didn't get served does not get

1 you anywhere.

2 MR. KATAEV: How does a person be expected
3 to respond to a lawsuit that they never received, your
4 Honor?

5 THE COURT: Mr. Kataev, they served the
6 Secretary of State and they served three summonses at a
7 business that your clients -- you couldn't tell me
8 whether they were there or not at that period of time.
9 Forget whether it was then that were handed it but I --
10 I'm telling you if I have to put these people under
11 oath --

12 MR. KATAEV: That's fine. I met with them.

13 THE COURT: Yes, sir, you did, but they
14 thought there would be no repercussions and then their
15 bank account was frozen and all of a sudden, they're
16 running to a lawyer.

17 MR. KATAEV: More speculation and
18 conjecture, your Honor. We look forward to submitting
19 the motion.

20 THE COURT: That's very try but besides the
21 motion, have your clients prepared to testify under
22 oath as to how they found out about this and why, if
23 they were still operating the restaurant at the time
24 that these affidavits of service were filed, why they
25 would have never found out about this.

1 MR. KATAEV: Understood, your Honor, fair
2 enough.

3 THE COURT: Okay, Happy Holidays, everybody.
4 This matter is adjourned.

5 MS. BIANCO: Happy Holidays.

6 THE COURT: Thank you.

7 MS. BIANCO: Thank you.

8 MR. KATAEV: Thank you for your time, your
9 Honor.

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18 I certify that the foregoing is a correct
19 transcript from the electronic sound recording of the
20 proceedings in the above-entitled matter.
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24

25 ELIZABETH BARRON

December 20, 2023